

## **CHAPTER 13-03.1 CONSUMER FINANCE ACT**

**13-03.1-01. Definitions.** For purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Administrator" means the commissioner of financial institutions.
2. "License" means a permit, issued under the authority of this chapter, to make loans in accordance with the provisions of this chapter at a single place of business.
3. "Licensee" means a person to whom one or more licenses have been issued.
4. "Person" means an individual, partnership, association, corporation, limited liability company, and any other legal entity.

**13-03.1-02. Administration and exemptions.**

1. The administrator may employ such employees as may be necessary to administer and enforce the provisions of this chapter and may delegate the administrator's powers and duties under this chapter to the supervisor of consumer credit. The supervisor of consumer credit and employees may not have a financial interest, directly or indirectly, in any business which is subject to this chapter, or in any other business which is supervised by the administrator, or in any similar business which is conducted under the authority of any law of the United States. All fees received by the administrator under the provisions of this chapter must be deposited in the financial institutions regulatory fund.
2. This chapter does not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banking associations, banking institutions, banks, savings banks, trust companies, savings or building and loan associations, mutual investment corporations, mutual savings corporations, or credit unions nor to any person conducting a bona fide pawnbroking business transacted under a pawnbroker's license for loans in an amount not to exceed one thousand dollars and such persons are not eligible to become a licensee under this chapter.

**13-03.1-03. Scope.** Persons licensed under the provisions of this chapter may engage in the business of lending in amounts not to exceed thirty-five thousand dollars and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, subject to the limitations provided in this chapter.

**13-03.1-04. Procedure and judicial review.** The provisions of chapter 28-32 govern all proceedings under this chapter or judicial review thereof, where said provisions do not conflict with specific provisions of this chapter.

**13-03.1-05. Application and fees.** Application for a license must be in writing, under oath, and in the form prescribed by the administrator. The application must give the location where the business is to be conducted and must contain such further information as the administrator may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 13-03.1-06. When making such application, the applicant shall include payment in the amount of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and three hundred dollars for the annual license fee.

**13-03.1-06. Investigation of application - Requirements for issuance of license - Denial of license - Public record.**

1. Upon the filing of an application and the payment of the fees therefor, the administrator shall investigate the facts concerning the application.
2. The administrator shall issue a license to operate a consumer finance loan business if the administrator finds:
  - a. That the financial responsibility, financial condition, business experience, character, and general fitness of the applicant must reasonably warrant the belief that the business will be conducted lawfully and fairly. In determining whether this qualification is met and for the purpose of investigating compliance with this chapter, the administrator may review and consider the relevant business records and the capital adequacy of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant, and whether the applicant has filed the appropriate registration with the North Dakota secretary of state if so required; and
  - b. That the applicant has a net worth of at least twenty-five thousand dollars for the operation of the business.
3. The administrator shall approve or deny every application for a license hereunder within sixty days from the filing thereof with the fee.
4. No application may be denied until the applicant has had a notice of a hearing on the application and an opportunity to be heard thereon. Whenever an application is denied, the administrator shall, within twenty days thereafter, prepare and keep on file in the administrator's office a written order of denial thereof. The order must contain its findings with respect thereto and the reasons supporting the denial, and the administrator shall send a copy thereof by registered mail to the applicant at the address set forth in the application within five days after the filing of the order. If the administrator finds the applicant is not qualified to be issued a license, the administrator shall return the license fee but may retain the investigation fee.
5. The administrator shall, upon request and payment of the annual license fee, deliver evidence of licensing under this chapter to the persons so previously licensed or authorized.

**13-03.1-07. Posting of license - Continuing license - Annual fee.**

1. Each license must state the address at which the business is to be conducted and must state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation, and if a limited liability company, the date and place of organization. Each license must be kept posted in the licensed place of business and is not transferable or assignable.
2. Each license must remain in effect until surrendered, revoked, or suspended; provided, that on or before the first day of June of each year the licensee shall pay to the administrator the annual license fee for each license held, as a license fee for the succeeding fiscal year.

**13-03.1-07.1. Expiration and renewal of license.** All licenses required herein expire on June thirtieth of each year and may be renewed. Renewals are effective the succeeding July first. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify the denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license.

A consumer finance license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a consumer finance license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The consumer finance license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

**13-03.1-08. Place of business - Removal - Residence of borrower.**

1. Not more than one place of business for the making and collecting of loans made pursuant to this chapter shall be maintained under the same license, but the administrator may issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing issuance of a single license. Nothing in this chapter shall be construed to require a license for any place of business devoted entirely to accounting or other recordkeeping.
2. Whenever a licensee changes the licensee's place of business to a location other than that set forth in the licensee's license, the licensee shall give fifteen days' written notice thereof to the administrator.
3. Loans made by mail shall not violate this section.

**13-03.1-09. Revocation or suspension of license.**

1. The administrator may issue to a person licensed to make loans under this chapter an order to show cause why the person's license should not be revoked or suspended for a period not in excess of six months. The order must state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the administrator shall revoke or suspend the license if the administrator finds that:
  - a. The licensee has repeatedly and willfully violated this chapter or any rule or order lawfully made pursuant to this chapter; or
  - b. Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.
2. No revocation or suspension of a license is lawful unless prior to institution of proceedings by the administrator notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.
3. If the administrator finds that probable cause for revocation of a license exists and that enforcement of this chapter requires immediate suspension of the license pending investigation, the administrator may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.
4. Whenever the administrator revokes or suspends a license, the administrator shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order, the administrator shall deliver to the licensee a copy of the order and the findings supporting the order.
5. Any person holding a license to make loans under this chapter may relinquish the license by notifying the administrator in writing of its relinquishment, but this relinquishment does not affect the person's liability for acts previously committed.

6. No revocation, suspension, or relinquishment of a license impairs or affects the obligation of any preexisting lawful contract between the licensee and any debtor.
7. The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

**13-03.1-09.1. Suspension and removal of consumer finance officers or employees.**

1. The commissioner of financial institutions may issue and serve upon a consumer finance officer or employee and upon the consumer finance company involved a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
  - a. Violating a law, rule, order, or written agreement with the commissioner;
  - b. Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
  - c. Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the consumer finance company. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed consumer finance company.
5. When an officer or employee, or other person participating in the conduct of the affairs of a consumer finance company is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the consumer finance affairs, or both. The order is effective immediately upon service of the order on the consumer finance company and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

**13-03.1-10. Records - Annual reports - Biennial report.**

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to

determine whether the licensee is complying with this chapter. The records of a licensee may be maintained electronically provided all records can be reproduced upon request of the department of financial institutions and within the required statutory timeframe outlined in this section. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

2. On or before July thirty-first each year, the parent company of each licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all loans made by its licensees. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. The administrator may make and publish annually an analysis and recapitulation of such reports.
3. The administrator shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the administrator's report must include a summary or abstract of the annual reports filed with the administrator.

#### **13-03.1-11. Examinations and investigations.**

1. At least once each thirty months the administrator or a duly authorized representative shall make an examination of the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this chapter or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any lender. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the lender. Fees for such examinations must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
2. If the lender's records are located outside this state, the lender, at the lender's option, shall make them available to the administrator at a convenient location within this state, or pay the reasonable and necessary expenses for the administrator or administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.
3. For the purposes of this section, the administrator may administer oaths or affirmations and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.
4. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court of the county in which the consumer finance loan business is being conducted for an order compelling compliance.

**13-03.1-11.1. Response to department requests.** An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information,

documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

**13-03.1-12. Regulations and orders - Certified copies of official documents.**

1. The administrator shall have power and authority to promulgate in accordance with chapter 28-32 as it may be amended, such rules and regulations as may be reasonably necessary to carry out the provisions of this chapter.
2. On application of any person and payment of the costs thereof, the administrator shall furnish a certified copy of any license, regulation, or order.

**13-03.1-13. Advertising.** No licensee or other person subject to this chapter may advertise, display, distribute, broadcast, or televise any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans, or cause or permit the same to be done.

**13-03.1-14. Other business in the same office - Business confined to licensed office.**

1. If the administrator finds, after a hearing, that the conduct of other business by the licensee or any other person has concealed evasion of the chapter or the rules and regulations made hereunder, the administrator shall order such licensee in writing to desist from such conduct.
2. No licensee may make loans provided for by this chapter under any name, or at any place of business within this state other than that stated in the license except as provided in section 13-03.1-08.

**13-03.1-15. Maximum charges permitted - Installment payments - Other charges.**

1. Every licensee may make loans under this section, including revolving loans, in any principal amount more than one thousand dollars but not more than thirty-five thousand dollars and may contract for, receive, or collect interest on the loans at any rate agreed upon by the licensee and the borrower.
2. Every loan contract must require payment of principal and charges in installments which must be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment, except in the case of revolving loan contracts. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.
3. Interest may be collected on the unpaid balance of any judgment at a rate not exceeding that permitted by section 47-14-09.
4. No further amount whatsoever in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. No agreement may provide for the payment by the debtor of attorney's fees. However, such restrictions do not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, an amount not exceeding closing costs actually incurred in connection with a loan secured by an interest in land (including fees or premiums for title examination, title insurance, and surveys, fees for notarizing title or mortgage documents, and appraisal fees), and

the identifiable charge or premium for insurance provided for in section 13-03.1-17. A bona fide error of law or fact is not deemed a violation of this section. A bona fide clerical error in the calculation of interest is not deemed a violation of this section if the licensee corrects the error.

**13-03.1-15.1. Maximum charges permitted for loans not in excess of one thousand dollars - Refund - Installment payments - Permitted charges.**

1. Every licensee may make loans under this section in any amount not exceeding one thousand dollars, and may contract for, receive, or collect on the loans, charges not in excess of two and one-half percent per month on that part of the unpaid balance of principal not exceeding two hundred fifty dollars; two percent per month on that part of the unpaid balance of principal exceeding two hundred fifty dollars but not exceeding five hundred dollars; one and three-fourths percent per month on that part of the unpaid balance of principal in excess of five hundred dollars but not exceeding seven hundred fifty dollars; and one and one-half percent per month on that part of the unpaid balance of principal exceeding seven hundred fifty dollars but not exceeding one thousand dollars. For the purpose of computing charges for a fraction of a month, whether at the maximum rate or less, a day is considered one-thirtieth of a month. Amounts to be charged for any small loan by a licensee under this chapter may also be calculated and charged on a stated dollar per hundred basis but the charges over the entire term of the loan may not be in excess of the equivalent percentage charges on the monthly unpaid balances of principal authorized in this section. If charges are calculated and charged on a dollar per hundred basis, the loan must be repayable in substantially equal periodic installments of principal and charges, and the annual percentage simple interest equivalent must be conspicuously stated in the note or small loan contract executed in connection with the loan.
2. When any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis is paid in full by cash, a new loan, renewal, or otherwise, one month or more before the final installment date, the licensee shall refund or credit to the borrower a portion of the total charges which must be at least as great as the sum of the full periodic installment balances scheduled to follow the installment date following the date of prepayment in full bears to the sum of all the periodic installment balances of the loan contract, both sums to be determined according to the payment schedules that had been agreed upon in the loan contract. Charges during the month of payment must be prorated in the proportion that the number of days remaining in the installment period bears to the total days of the installment period. No refund of one dollar or less need be made.
3. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, a licensee may charge, collect, and receive on any installment of principal and charges continuing unpaid for five or more days from the date the payment is due a sum that may not exceed the amount of charges during the final full month of the loan before maturity. The charge may not be collected more than once for the same default. The charge may be collected at the time of the default or any time thereafter. However, if the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent installment, no charge may be made for the subsequent default.
4. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, if the payment date for any scheduled installment is deferred one or more full months and a corresponding deferment is made for all subsequent installments, the licensee may charge and receive a deferment charge that may not exceed one-twelfth of the charges authorized in subsection 1 applied to the balance of principal and charges due at the date of the deferment multiplied by the number of full months during the deferment in which no payment is made. Thereafter, charges must be made over the remaining extended life of the loan in

the same manner and at the same ratio as though no deferral or extension had been granted. The charges may be collected at the time of the deferment or any later time. If the loan is prepaid in full during the deferment period, the borrower is entitled to receive in addition to the refund required under subsection 2 a refund of that portion of the deferment charge applicable to any unexpired months of the deferment period.

5. A licensee may not enter into any contract of loan under this section under which the borrower agrees to make any scheduled payment of principal and charges more than twenty-four and one-half calendar months from the date of making the contract. Every loan contract must require payment of principal and charges in installments that must be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.
6. A licensee may not induce or permit any person, or husband and wife, jointly or severally, to be obligated, directly or indirectly, under more than one contract of loan at the same time if the multiple loans result in a higher rate of charge than would otherwise be permitted by this chapter.
7. No further amount in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. However, this restriction does not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, and the identifiable charge or premium for insurance provided for in section 13-03.1-17. If any sum in excess of the amounts authorized by this chapter is willfully charged, contracted for or received, the licensee or any assignee or other person has no right to collect or receive any charges or recompense.

**13-03.1-16. Requirements for making and payments of loans - Confessions of judgment - Incomplete instruments.**

1. Every licensee shall:
  - a. Give a receipt to the person making a cash payment on account of any loan unless payment is made by check or money order.
  - b. Permit payment in full to be made in advance.
  - c. Upon repayment of the loan in full, provide evidence of payment, release any mortgage, or financing statement no longer securing any indebtedness, restore any pledge, and cancel any assignment given to the licensee.
2. No licensee may:
  - a. Take any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor
  - b. Take any instrument in which blanks are left to be filled in after the loan is made.

**13-03.1-17. Insurance - Insurance policies - Existing insurance.**

1. The following types of insurance may be written in connection with loans made by licensees under this chapter, however, nothing in this chapter limits the right of a



licensee and a borrower to enter into a transaction involving the purchase of insurance or other products by the borrower from or through the licensee if the purchase is voluntary on the part of the borrower, is not a condition to the making of the loan, and if the insurance purchase is related to and written in connection with the making of a loan under this chapter:

- a. In the case of motor vehicles having a book value of more than five hundred dollars, fire, theft, and windstorm, and fifty dollars or more deductible collision; and in the case of all motor vehicles, bodily injury liability and property damage liability. If neither liability or property damage insurance is written, but other insurance is written covering a motor vehicle, the borrower shall sign the following statement: "This contract does not provide for motor vehicle liability and property insurance".
  - b. Fire and extended coverage insurance upon property.
  - c. Life (on one or more borrowers) and accident and health insurance or any of them may be written upon, or in connection with, any loan in any amount not exceeding the total amount to be repaid under the loan contract, and for a term not extending beyond the final maturity date of the loan contract; provided, that in the event of a renewal or prepayment of a contract or loan, this type of insurance must be canceled and a refund of the unearned premium must be credited or paid the borrower.
2. Notwithstanding any other provision of this chapter, any gain or advantage in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale is not deemed to be an additional or further charge in connection with the contract of loan.
  3. The insurance premium for any insurance related to and written in connection with the making of a loan under this chapter may be collected from the borrower or included in the loan contract at the time the loan is made. Any insurance related to and written in connection with the making of a loan under this chapter may not exceed the term of the loan or any extensions of the term.
  4. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower within fifteen days after the making of the loan an executed copy of the insurance policy or certificate of insurance. A borrower may procure insurance to secure a loan from any agent authorized to do business by the insurance commissioner. A licensee may require that such insurance be provided, including endorsements thereon, prior to any disbursement of loan proceeds, but charges will not accrue on any loan until the loan proceeds are disbursed. Nothing in this chapter impairs or invalidates the obligations of any loan contract which was lawfully entered into prior to July 1, 1975.

**13-03.1-18. Penalty.** A person who violates any of the provisions of this chapter or rules adopted hereunder is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund. If a contract of loan in an amount exceeding one thousand dollars or any act in its making or collection violates the provisions of this chapter, the lender has no right to collect, receive, or retain any interest or charges whatsoever. If a contract of loan in an amount of one thousand dollars or less, or any willful act in its making or collection violates the provisions of this chapter, the lender has no right to collect, receive, or retain any interest or charges on that loan.

**13-03.1-19. Short title.** This chapter must be known and may be cited as the North Dakota Consumer Finance Act.